

Christopher K. Oliveira
John M. Semmens
CROWLEY FLECK PLLP
900 North Last Chance Gulch, Suite 200
P.O. Box 797
Helena, MT 59624-0797
Telephone: (406) 449-4165
Fax: (406) 449-5149
Email: coliveira@crowleyfleck.com
jsemmens@crowleyfleck.com

*Attorneys for Defendant Waterford Operating, LLC,
d/b/a Big Sky Senior Living on Waterford Way*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

CLAYTON JAMES McCLOSKEY,)

Plaintiff,)

v.)

BIG SKY SENIOR LIVING ON)
WATERFORD WAY,)
WATERFORD OPERATING, LLC)
and JOHN AND JANE DOES 1-5,)

Defendant.)

CV-17-91-BU-SEH

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a) and 1446, Defendant Waterford Operating, LLC, d/b/a as Big Sky Senior Living on Waterford Way¹ (collectively, “Waterford”), files this Notice of Removal from the Montana Second Judicial District Court, Butte-Silver Bow County, to the United States District Court for the District of Montana, Butte Division. In support of this Notice of Removal, Defendant states as follows:

CASE BACKGROUND AND FOUNDATION FOR REMOVAL

1. On September 6, 2017, Plaintiff Clayton James McCloskey (“McCloskey”) filed a Second Amended Complaint and Demand for Jury Trial against Waterford in the Montana Second Judicial District Court, Butte-Silver Bow County, in Cause No. DV-16-437.

2. McCloskey’s Complaint seeks judgment against Waterford based upon claims of wrongful discharge from employment, as well as a claim for overtime compensation filed under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

¹ Plaintiff Clayton James McCloskey’s (“McCloskey”) Second Amended Complaint (“Complaint”) incorrectly identified Waterford Operating, LLC and Big Sky Senior Living on Waterford Way as separate legal entities. Waterford affirmatively states that Waterford Operating, LLC is a Montana corporation in active good standing with the Montana Secretary of State, with an assumed business name of Big Sky Senior Living on Waterford Way. Based on the foregoing, McCloskey should amend the caption of his Complaint.

3. McCloskey mailed various documents to Waterford that Waterford received on October 23, 2017, including: (1) a Second Amended Complaint and Demand for Jury ("Complaint"), attached as Exhibit A; (2) a Notice of Lawsuit and Request to Acknowledge and Waive Service of Summons, attached as Exhibit B; (3) a draft Acknowledgement and Waiver of Service and Summons, attached as Exhibit C; (4) an Order Granting McCloskey's Unopposed Motion to File the Second Amended Complaint and Demand for Jury, attached as Exhibit D; (5) an Order Inviting Assumption of Jurisdiction and an Order Assuming Jurisdiction, attached as Exhibit E; and (6) a Summons issued to Waterford, attached as Exhibit F.

4. Waterford signed the Acknowledgement and Waiver of Service and Summons on November 10, 2017, acknowledging that formal service of process of these documents occurred as of that date. A true and correct copy of Waterford's signed Acknowledgement and Waiver of Service and Summons is attached as Exhibit G.

5. Each of the documents McCloskey served upon Waterford has been attached to this Notice of Removal as required by 28 U.S.C. 1446(a). Upon information and belief, additional pleadings were filed with the Montana Second Judicial District Court, Butte-Silver Bow County, in Cause No. DV-16-437, but McCloskey has not served those pleadings on Waterford.

6. This Court has original jurisdiction over all of McCloskey's claims pursuant to 28 U.S.C. §§ 1331 (federal question) and 1367 (supplemental jurisdiction).

7. McCloskey's Complaint may be removed to this Court pursuant to 28 U.S.C. § 1441(c) because it includes claims arising under the laws of the United States within the meaning of 28 U.S.C. § 1331 and state claims over which the Court holds supplemental jurisdiction within the meaning of 28 U.S.C. § 1367.

8. Venue is proper in this Court because the State Court Action is pending in the Montana Second Judicial District Court, Butte-Silver Bow County. *See* 28 U.S.C. § 1441(a).

9. This Notice of Removal is timely filed. *See* 28 U.S.C. § 1446(b).

10. This Notice of Removal has been served on McCloskey's counsel. A Notice of Filing of Notice of Removal to Federal Court (attached as Exhibit H) will be filed in the Montana Second Judicial District Court, Cause No. DV-16-437, as soon as this Notice of Removal has been filed in this Court.

WHEREFORE, Waterford respectfully requests that the action now pending before the Montana Second Judicial District Court, Butte-Silver Bow County, as Cause No. DV-16-437, be removed to this Court.

DATED this 7th day of December, 2017.

CROWLEY FLECK PLLP

By: /s/ Christopher K. Oliveira

Christopher K. Oliveira

John M. Semmens

*Attorneys for Waterford Operating, LLC,
d/b/a Big Sky Senior Living on Waterford Way*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was served upon Plaintiff Clayton James McCloskey's counsel of record by the means designated below, this 7th day of December, 2017.

<input checked="" type="checkbox"/> U.S. Mail	W. Wayne Harper
<input type="checkbox"/> FedEx	HARPER LAW FIRM
<input type="checkbox"/> Hand-Delivery	35 West Granite
<input type="checkbox"/> Facsimile	Butte, Montana 59701
<input type="checkbox"/> Email	wayne@wharperlaw.com

/s/ Christopher K. Oliveira

CROWLEY FLECK PLLP